

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3034 of 1996

WITH

CIVIL APPLICATION NO.8123 OF 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

1 to 5 No

NILA N SHAH

Versus

STATE OF GUJARAT

Appearance:

Mr. D.V.Mehta for TANNA ASSOCIATES for Petitioner
MR DA BAMBHANIA,learned Addl.G.P. for Respondents

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 18/12/96

ORAL JUDGMENT :

1. The petitioner has been working as a Tutor in Pathology since August,1993. The selections were held in November,1994, but the petitioner was not selected by Gujarat Public Service Commission (hereinafter referred to as 'the GPSC'). It is precisely on account of her non

selection by GPSC that the respondents proceeded to terminate her services by an order dated 16.4.96. Against this order dated 16.4.96 the petitioner sought the protection of this Court by filing this Special Civil Application and on 30.7.96 the operation of the order dated 16.4.96 was stayed. When the respondents filed Civil Application No.8123 of 1996 for vacating the interim order and the matter came up before this court on 26.11.96, Mr.Bambhaniya was asked to give specific reply to the factual submissions and contentions raised by the petitioner in para 4 of the Special Civil Application and the main matter itself was taken up for hearing. No specific reply to para 4 of the Special Civil Application has been filed. In para 4 of the Special Civil Application, the petitioner has named about 10 candidates appointed subsequent to the petitioners appointment. The petitioner was appointed on 23.7.93 whereas the 10 Doctors named in Para 4 have been appointed during the period November 1993 to January 1996 and all these 10 doctors are also those who have appeared in the selection before GPSC but they have not been selected. The petitioner has submitted that while the appointees subsequent to the date of her appointment, who are exactly similarly situated to her, have been allowed to continue and are continuing in service as Tutors, the petitioner has been picked up for termination by order dated 16.4.96 and thus she has been subjected to a glaring discrimination vis a vis her juniors. it is also submitted that vacancies are available against which the petitioner could be continued as a Tutor.

2. In the facts and circumstances of this case, it is clearly made out that about 10 similarly situated Doctors are being allowed to continue in service, who too have not been selected by the GPSC and who are all appointed on dates subsequent to the petitioner's appointment and the vacancies are available even after exhausting all the candidates selected by GPSC. Therefore, there is no justification to terminate the services of the petitioner, more particularly when it is not controverted that even after exhausting the list of selected candidates by GPSC the vacancies are available and the persons junior to the petitioner are continuing and even after accommodating all the selected candidates vacancies are available against which the petitioner could be continued like the 10 Doctors named in para 4 of the petition.

3. For the reasons aforesaid, the petitioner's termination order dated 16.4.96, the operation of which was stayed by this court on 30.7.96, is hereby quashed

and set aside and the petitioner will be treated to be continuing in service as if the order dated 16.4.96 had never been passed against her. But it is made clear that she will be allowed to continue in service till regular appointments are made on the basis of selection held by GPSC in future. Special Civil Application is accordingly allowed. Rule is made absolute with no order as to costs.

4. Since the main matter itself has been decided, no orders are required to be passed in Civil Application No.8123 of 1996 moved by the applicants i.e. original respondents Nos.1 and 2. Civil Application is accordingly disposed of.

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